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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/832,434
Filing Date: April 10, 2001
Appellant(s): KRAFT ET AL.

John G. Rauch
Reg. No. 37,218
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 20, 2007 appealing from the Office action mailed December 15, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,112,240	Pogue	8-2000
20010020236	Cannon	9-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-7 and 13-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pogue et al US PN. (6112240) in view of Cannon USPN. (20010020236).

As per claim 1, Pogue et al teach a system for monitoring usage of a web browser executing on a client computer (client computer 200, fig. 3) during interaction with a content server (content server 304, fig. 3), said system comprising:

a client component (a tracking program) for determining whether a user identification code associated with said web browser (cookie includes identifier code identifying a user col. 7, 2-10) indicates the web browser (identifier code related to user's browser identifies the user browser and the client computer that is tracked col. 4, lines 6-15 and col. 6, lines 46 to col. 7, line 10). Although Pogue et al show substantial features of the claimed invention, he does not explicitly show a sampled population of users (visitors). Nonetheless, this feature is well known in the art and would have been an obvious modification of the system disclosed by Pogue et al, as evidenced by Cannon USPN. (20010020236).

In analogous art, Cannon whose invention is about a method of analyzing the access habits and preference of media audiences discloses tracking and analyzing the behavior of a sample population for visitors to web pages on the World Wide Web [¶0064 and ¶ 0133]. Giving the teaching of Cannon, a person of ordinary skill in the art would have readily recognized the desirability and the advantage of modifying Pogue et al by employing the advertising optimization system of Cannon so that businesses, network, and advertising agencies can interactively create, score, rank and compare various proposed or actual advertising strategies in a simple and efficient manner. This allows the decision makers to more effectively tailor their marketing efforts and successfully reach the desired target market while conserving scarce advertising capital (abstract and 000133-0134).

Pogue et al as modified further teach transmitting usage data indicative of said interaction in the event said web browser is included within said sampled population (client computer information and a tracker message is transmitted by the client col. 2, lines 13-25 and col.5, lines 17-40) wherein said sampled population comprises a subset of a set of web browsers interacting with said content server (information relating to the browser type, version and cookie number identifying the client computer is obtained from the message header of tracker message col. 6, lines 14 to col. 7, line 10); and
a monitoring server for receiving said usage data transmitted by said client component (tracking computer 308 stores tracked information received from tracked client computers col. 4, lines 3-42].

As per claim 2, Pogue et al teach the system of claim 1 wherein said user identification code is stored on said client computer as persistent client-side state information [cookie with user identifier code is stored on tracked client computers col. 6, lines 46 to col. 7, line 10].

As per claim 3, Pogue et al teach the system of claim 1 wherein said client component includes a sampling tag embedded within a web page provided to said web browser by said content server (col. 4, lines 6-29), said sampling tag determining whether persistent client-side state information stored on said

client computer includes identification information suitable for use as said user identification code (col. 4, lines 6-41 and col. 5, 7-53).

As per claim 4, Pogue et al teach the system of claim 3 wherein said sampling tag generates a random number corresponding to said user identification code in the event said identification information is determined to be unsuitable for use as said user identification code [random number is added the URL col. 6, lines 14-28].

As per claim 5, Pogue et al teach the system of claim 4 wherein said random number is appended to said persistent client-side state information and thereby stored on said client computer as said user identification code [random number is added the URL col. 6, lines 14-28].

As per claim 6, Pogue et al teach the system of claim 3 wherein said client component further includes a data collection script, said sampling tag requesting said data collection script to be downloaded from said monitoring server to said client computer in the event that said user identification code indicates that said web browser is included within said sampled population [col.4, lines 16-29 and col.6, lines 1-28].

As per claim 7, Pogue et al teach the system of claim 3 wherein said random number is stored on said client computer as said user identification code in the form of a sampling cookie distinct from said persistent client-side state information, said sampling tag determining whether said user identification code indicates that said web browser is included within said sampled population [col.6, lines 1-28 and col. 6, lines 46 to col. 7, line 10].

As per claims 13,17 and 21, Pogue et al teach the invention for monitoring user interaction with a web browser executing on a client computer, said method comprising the steps of (fig. 3 and abstract):

embedding, within a file, an address of a first server computer (col. 4, lines 6-29);

downloading said file from a second server computer to said client computer (col. 4, lines 61 to col. 5 lines 30],

determining whether a user identification code associated with said web browser indicates that said web browser is within a randomly selected web browsers interacting with said second server computer (identifier code related to user's browser identifies the user browser and the client computer that is tracked col. 4, lines 6-15 and col. 6, lines 46 to col. 7, line 10);

generating usage data indicative of said interaction in the event said web browser is within said randomly selected subset (information relating to the browser type, version and cookie number identifying the client computer is

obtained from the message header of tracker message of the tracked computer col. 6, lines 46 to col. 7, line 10);

transmitting said usage data to said first server computer (col. 2, lines 13-25 and col.5, lines 33-40); and

receiving said usage data at said first server computer and storing said usage data (tracking computer 308 stores tracked information received from tracked client computers col. 4, lines 3-42).

As for the subset of a set of browsers (sampled population of user (browser), see the rejection of claim 1 above.

As per claims 14 and 18, Pogue et al teach the invention further including the step of storing said user identification code within said client computer as persistent client-side state information [cookie with user identifier code is stored on tracked client computers col. 6, lines 46 to col. 7, line 10].

As per claims 15, 19 and 22, Pogue et al teach the invention further including the step of determining whether persistent client-side state information associated with said web browser includes identification information suitable for use as said user identification code (col. 4, lines 6-41 and col. 5, 7-53).

As per claims 16, 20 and 23, Pogue et al teach the invention further including the steps of generating a random number corresponding to said user identification code in the event said identification information is determined to be unsuitable for use as said user identification code, and determining whether said random number indicates that said web browser is included within said randomly selected subset [random number is added the URL col. 6, lines 14-28].

Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pogue et al US PN. (6112240) in view of Cannon USPN. (20010020236).
As per claim 8, Pogue et al and Cannon show the invention substantially as explained in claim 1 above.

Pogue et al further teach a transmission channel and a first client component coupled to the transmission channel (see fig. 3 internet connection 295A).
Although, Pogue et al and Cannon show substantial features of the invention including a first client in local area network that is connected to Internet 295A, he does not show a second client with the similar functionality as the first client. Nonetheless, these feature of having more than on client in a local area network (LAN) is well known in the art as suggested by Pogue et al where computer 200 may be in local area network (col. 3, lines 62-67). It would have been obvious to one ordinary skill in the art at the time of the invention to

include more than one client computer in the system of Pogue et al as suggest by Pogue et al in for the advantage of efficiently tracking particular browsers and determining the number of accesses made by a particular browser on a specified client computer.

As per claim 9, Pogue et al teach the system of claim 8 wherein said first client component determines whether persistent client-side state information stored on said first client computer and associated with said first web browser includes identification information suitable for use as said first user identification code (col. 4, lines 6-41 and col. 5, 7-53).

As per claim 10, Pogue et al teach the system of claim 9 wherein said first client component generates a random number corresponding to said first user identification code in the event said identification information is determined to be suitable for use as said first user identification code (col. 4, lines 6-41 and col. 5, 7-53).

As per claim 11, Pogue et al teach the system of claim 8 wherein said first client component includes a first sampling tag and a first data collection script, said first sampling tag requesting said first data collection script to be downloaded from said monitoring server to said first client computer in the event that said first user identification code indicates that said first web

browser is included within said sampled population [col.4, lines 16-29 and col.6, lines 1-28].

As per claim 12, a client component with similar limitations has been described in the rejection of clam 11 above. Therefore, it is rejected with the same rationale.

(10) Response to Argument

In essence the Appellant argues "The cited art does not disclose or suggest 'a client component for determining whether a user identification code associated with said web browser indicates that said web browser is within a sampled population.'" (Page 6, last paragraph and Page 7 last paragraph).

The Examiner respectfully disagrees. The Examiner notes, in response to Appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). For example Pogue teaches a client component (a tracking program, see abstract) for determining whether a user identification code associated with said web browser indicates the web browser (information related to user

browser 302 and client computer 200 is obtained to determine a user identification code associated with a web browser col. 6, lines 66 to col. 7, line 7). Furthermore Pogue teaches "the tracker 310 uses cookies and common gateway interface (CGI) scripts to obtain the client information" col. 6, lines 46-50. The cookie includes a unique identifier code for identifying a client computer 200 (user computer) and associated browser information (col. 7, lines 4-10 and col. 4, lines 6-15).

As to the limitation of the web browser being within a sampled population, Cannon is relied upon to teach this limitation. For example Cannon whose invention is about a method of analyzing the access habits and preference of media audiences, discloses disclose tracking and analyzing the behavior of a sample population for visitors to a web pages on the World Wide Web [¶0064 and ¶ 0133]. Therefore, the combined teachings of Cannon and Pogue disclose the argued limitation.

Appellant also argues that "Cannon (along with Pogue) fails to disclose 'wherein said sampled population comprises a subset of a set of web browsers interacting with said content server, as recited by claim 1." (Page 8, last paragraph).

Examiner notes that the combined teachings of Cannon and Pogue disclose this limitation. For example Pogue teaches obtaining information such as the type of browser accessing web pages that include Java enables browser (e.g., Netscape Navigator.TM. 2.0, 3.0, or Microsoft Internet Explorer.TM. 3.0) and Non-java enabled browser (see col. 5, lines 61 to col. 6 line 45). Hence the word browser can be interpreted as the set, while the browser versions of the web browser (e.g., Netscape Navigator.TM. 2.0, 3.0, or Microsoft Internet Explorer.TM. 3.0) or the type of the web browser (Java enabled or non-java enabled browser) as the subset. Also Cannon teaches generating from a sample of 5,000 households, with a total of about 15,000 sample members living in those households based on viewing logs (0068). Furthermore, Cannon teaches demographic rating based on the number of people in a particular demographic group who saw a show divided by the number of people in the population for that demographic group.“ (0113). Again this clearly teaches determining a sampled population based on the number of users identified in accessing the broadcast program. Finally, Cannon teaches “It should be noted that the concepts and techniques of the present invention are equally applicable to tracking and analyzing the behavior of a sample population for visitors to web pages on the World Wide Web." [0133]. in this case Cannon does teach the sampling and a subset of users based on demographic choices and Pogue teaches set of browsers interacting with a web server, therefore the combined teachings of Pogue and Cannon teach the argued limitations.

The Appellant argues "There is no suggestion [to] combine Cannon and Pogue", see section b page 9.

In response to Appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Cannon teaches "It should be noted that the concepts and techniques of the present invention are equally applicable to tracking and analyzing the behavior of a sample population for visitors to web pages on the World Wide Web. Similarly, information about the readership populations for magazines and newspapers could also be manipulated and analyzed by applying various preferred embodiments of the present invention. Indeed, any advertising firm/agency, business, or other organization that wishes to track large quantities of information regarding various sample populations can successfully implement the various techniques and methods described herein." [0133]. The above statement certainly shows a suggestion found in Cannon's reference and a motivation such as significant advantages that are obtained: "the ability to add, on a weekly basis, large quantities of data

to the existing user databases; a way to easily move relevant portions of existing databases from location to location (such as from a central server to a laptop computer); the ability to retrieve large blocks of data from the database, organize the data in memory, and analyze the data; the ability to filter the data according to user selected demographic criteria; and retrieve information for the same sample members across multiple weeks." [0134]. Hence the examiner believes there is a clear suggestion and motivation to combine the two references.

As to the Appellant's argument of "There is absolutely no method nor system in Pogue that even suggests gathering data from a sample of browsers. The principle operation of Pogue is to register every time every browser accesses every web page. Pogue records the activity of every browser each time the browser accesses each website. (Col. 4, lines 15- 19)."(Page 9 last second and third paragraphs). The Examiner respectfully disagrees. For example, Pogue teaches "In addition, the tracker 310 receives the last cookie, if any, that the web page received from the tracker 310. The cookie may include a unique identification number identifying the client computer 200 and/or the last web page in the web site 306 that was visited by such browser 302. From this information, a web site administrator may determine the number of accesses by a particular browser 302 on a specified client computer 200, and the last web page accessed by such browser 302." (Col. 7, lines 4-10. See also col. 6,

lines 45-50). It is those particular browsers that received cookies from Pogue's tracker, if any, that is tracked.

The Appellant further argues "In Cannon, the sample is a group of viewers, all of whom interact with television broadcasting and all of whose data is collected. This group is selected ("sampled") from the total universe of viewers of television. If the same type of "sampling" was applied in a system in accordance with claim 1, all web browsers visiting a web site would be selected from all persons interacting with the World Wide Web." The Examiner respectfully disagrees. On the contrary, since the group is selected ("sample") from a particular number of viewers, it is only those that are sampled that it would apply not all viewers as suggested by the Appellant. In other words only the sampled web browsers visiting a web site would only be selected. Arguments related to claims 13-23 (page 10 second paragraph) are substantially similar to claim 1, therefore the same response to claim 1 above applies.

Regarding claim 17, the Appellant argues "The system of Pogue merely collects minimal amounts of data but does not disclose a method of determining whether to collect such data based on certain criteria within the collection method. The current invention does. Further, as noted above, Pogue collects

data from all browsers, not from any sample of browsers or even a random sample of browsers."

The Examiner respectfully disagrees. Other than the word random, the rest of the limitation has been addressed by the Examiner (see response to claim 1 above. Furthermore, Pogue teaches "the tracker tag preferably includes Javascript code that is embedded in the HTML code of the web page." Where the code includes random number such as "123456789" that is unique. (col. 6, lines 1-28).

Arguments related to claims 21 (page 12 last paragraph) are substantially similar to claim 1, therefore the same response to claim 1 above applies.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

May 22, 2008

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